

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



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Chief Deputy

*Protecting Utah • Protecting You*

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Chief Deputy

January 4, 2008

**REQUEST BY THE ATTORNEY GENERAL OF THE STATE OF UTAH  
FOR PROPOSALS TO SERVE AS BOND COUNSEL OR DISCLOSURE  
COUNSEL FOR LEASE REVENUE BONDS TO BE ISSUED BY THE UTAH  
STATE BUILDING OWNERSHIP AUTHORITY DURING 2008 AND 2009**

**PLEASE NOTE: WRITTEN PROPOSALS MUST BE RECEIVED NO LATER THAN  
12:00 P.M. (NOON) ON FRIDAY, JANUARY 18, 2007.**

To the Law Firm(s) or Attorney(s) Addressed:

The Attorney General is requesting proposals from attorneys and firms interested in serving as bond counsel or disclosure counsel for lease revenue bonds that will be issued by the Utah State Building Ownership Authority ("SBOA") during calendar years 2008 and 2009, as more fully described below under "Nature of the Appointments."

In response to this RFP, the Attorney General will consider proposals from the following: an individual attorney; two or more individual attorneys in association with each other; a law firm; two or more law firms in association with each other; or an individual attorney or two or more attorneys in association with a law firm or more than one law firm. For ease of reference, the term "firm" or "firms" will hereinafter refer to each of these groupings.

**OVERVIEW**

The Utah State Treasurer ("State Treasurer"), as the Secretary of the SBOA, has asked the Attorney General to appoint bond counsel and disclosure counsel to assist the SBOA with the issuance by the SBOA of lease revenue bonds. Pursuant to that request, the Attorney General's office has prepared this RFP to enable the Attorney General to appoint bond counsel and disclosure counsel to serve in those capacities for lease revenue bonds issued by the SBOA for

the period commencing immediately upon appointment and continuing through December 31, 2009.

For the past several years, the SBOA has issued lease revenue bonds at least once in each two-calendar year cycle. Governor Jon M. Huntsman, Jr. has included in his proposed budget for Fiscal Year 2009 (July 1, 2008 through June 30, 2009) a request for \$134,771,000 of new authorization for lease revenue bonds to be issued by the SBOA. However, the authorization of any new lease revenue bonds and the amount authorized are up to the Legislature. Furthermore, if the Legislature does authorize new lease revenue bonds, the exact amount of the bonds that will be authorized is often not known until near the end of the legislative session.

Although there is no certainty the Legislature will authorize the issuance of any lease revenue bonds during calendar years 2008 and 2009, or, if it does, what the amount of any such authorizations might be, the SBOA wants to have bond counsel and disclosure counsel appointed so they can provide the necessary services in the event the Legislature decides it wants to authorize lease revenue bonds during calendar years 2008 or 2009, and the SBOA decides it wants to issue lease revenue bonds during those years. Therefore, firms submitting proposals, and the firms ultimately appointed as bond counsel and disclosure counsel under this RFP, must understand that the appointment of bond counsel and disclosure counsel by the Attorney General does not in any way guaranty that any bonds will be issued during the two-year period of the firms' appointments.

### **STATE FACILITIES MASTER LEASE PROGRAM**

In 1994, the SBOA began issuing lease revenue bonds using a "State Facilities Master Lease Program". The SBOA first issued lease revenue bonds under that program in 1994, and has issued additional lease revenue bonds in many of the intervening years since then. State officials anticipate that any lease revenue bonds issued by the SBOA will continue to be issued under this program.

The Official Statement for the "State of Utah, State Building Ownership Authority \$15,380,000 Lease Revenue and Refunding Bonds (State Facilities Master Lease Program), Series 2007A," in which the "State Facilities Master Lease Program" is described in more detail, may be accessed on the internet at [www.utmuni.com](http://www.utmuni.com).

### **NATURE OF THE APPOINTMENTS**

Except as otherwise noted in this RFP, bond counsel and disclosure counsel appointed under this RFP will serve in those capacities for: (a) any lease revenue bonds authorized by the Legislature in calendar years 2008 and 2009 which are actually issued by the SBOA during calendar years 2008 or 2009; (b) any lease revenue bonds authorized prior to calendar year 2008 which have not yet been issued, but which are issued by the SBOA during calendar years 2008 or 2009; and (c) any lease revenue bonds issued by the SBOA during calendar years 2008 or 2009 to refund or redeem bonds or other debt instruments previously issued by the SBOA.

The appointments of bond counsel and disclosure counsel under this RFP may also include having the firms selected serve in those same capacities for any certificates of participation or other similar evidences of indebtedness issued by the SBOA. The appointments under this RFP do not include services as bond counsel or disclosure counsel for a number of other types of debt instruments that may be issued by the State, its departments, agencies, and boards, including, but not limited to: (1) any tax and revenue anticipation notes issued by the State Treasurer; (2) any general obligation bonds issued by the State Bonding Commission; (3) any revenue bonds (other than lease revenue bonds) issued by the State; (4) any bonds or other debt instruments issued by the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority; (5) and debt instruments issued by the Utah Housing Finance Agency; or (6) any short term obligations for highway purposes. Should a question arise as to whether the firms appointed under this RFP will serve as bond counsel and disclosure counsel on a particular bond issue, or whether other firms appointed under a separate RFP will serve in those capacities, the Attorney General alone will make the determination, although the Attorney General will consult with appropriate State officials before making such a determination.

Bond counsel will also be required to provide up to twenty-five (25) hours of legal advice per calendar year<sup>1</sup> to State officials, including persons in both the executive and legislative branches of government, on bond issues. While the intent is that these services would primarily relate to questions on lease revenue bonds, these advisory services could include responding to general inquiries about financing mechanisms other than lease revenue bonds. Areas in which such advice may be needed include, but are not limited to, drafting and/or reviewing legislation, and advising on laws and other factors impacting debt issued by the State. Bond counsel will provide this legal advice without charge to the State, except to the extent the firm has built remuneration for these services into the fees the firm will receive if bonds are issued (see paragraph B. below on fees under “**Required Contents of Proposals to Serve as Bond Counsel**”). Such advice shall be rendered when authorized by the State Treasurer or the Attorney General.

Disclosure counsel will also be required to provide up to ten (10) hours of legal advice to assist the State in complying with the State's continuing disclosure undertaking pursuant to Securities and Exchange Commission Rule 15c2-12. Disclosure counsel will review the information prepared by State officials in compliance with the continuing disclosure undertakings both with respect to lease revenue bonds that have been issued by the SBOA and with respect to general obligation bonds that have been issued by the State Bonding Commission, which information must be filed by January 15, 2009 for the fiscal year ending June 30, 2008, and by January 15, 2010, for the fiscal year ending June 30, 2009. The State

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<sup>1</sup> The twenty-five hours of legal advice for calendar year 2009 might actually begin in late 2008 if bond counsel is called upon in late 2008 for advice for lease revenue bond matters to be considered by the 2009 General Session of the Legislature.

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believes disclosure counsel will only need to spend a few hours (probably under ten hours each year) to complete this task.

The Attorney General will retain the right to use a different firm as bond counsel, or disclosure counsel, or both, on a particular project, if the Attorney General deems that to be in the State's best interest. While it is not anticipated that this option will be used, the Attorney General retains the right in order to allow the State to obtain the best services at a reasonable cost. For example, if the State should decide to enter into a complex type of transaction with which bond counsel, or disclosure counsel, or both, are unfamiliar, and another firm is available that has the necessary experience in that area, and, after considering all other factors (time, interest rates, etc.), the Attorney General determines the State's interests would best be served by using the other firm with the necessary experience with this type of transaction, the Attorney General reserves the right to appoint the other firm for that transaction.

Because State officials expect the SBOA will continue to issue lease revenue bonds under the "State Master Lease Program" (as explained above), bond counsel and disclosure counsel appointed under this RFP will need to be able to provide their respective legal services in conformity with that program.

In addition, due to the Federal arbitrage laws and the State's generally conservative approach on debt, if lease revenue bonds are authorized by the Legislature during 2008 and 2009, the SBOA will likely not issue all at one time the entire amount of lease revenue bonds authorized for a project if construction of the project is expected to span more than two years.

#### **APPOINTMENT BY ATTORNEY GENERAL**

The Attorney General is appointing bond counsel and disclosure counsel under this RFP pursuant to Utah Code Ann. § 67-5-5 (West 2004). The procedures the Attorney General will follow in making the appointment are set forth in Utah Admin. Code Rule R105-1.

#### **TERM OF APPOINTMENT**

Except as otherwise noted herein, bond counsel and disclosure counsel appointed under this RFP will serve in those capacities for lease revenue bonds issued by the SBOA effective immediately upon appointment, and during calendar years 2008 and 2009. The appointment of bond counsel under this RFP terminates at midnight on December 31, 2009. The appointment of disclosure counsel under this RFP with respect to serving as disclosure counsel on a bond issue also terminates at midnight on December 31, 2009, but the appointment of disclosure counsel continues with respect to the filing of the State's continuing disclosure undertaking continues until the continuing disclosure for 2009 has been filed in 2010. As a general rule, if significant work has been completed during 2009 on lease revenue bonds that will be sold after December 31, 2009, bond counsel and disclosure counsel appointed under this RFP will serve as bond counsel and disclosure counsel for any such bond issue. If significant work has not been

completed during 2009 on lease revenue bonds that will be sold after December 31, 2009, bond counsel and disclosure counsel appointed under this RFP will not serve as bond counsel and disclosure counsel for any such bond issue; rather, the Attorney General will prepare a new RFP, and bond counsel and disclosure counsel appointed under that new RFP will serve in those capacities for the lease revenue bonds that will be issued after December 31, 2009. However, the Attorney General reserves the right to extend the appointments of the firms appointed under this RFP (with the consent of the firms appointed) if bond counsel and disclosure counsel for the issuance of lease revenue bonds by the SBOA have not yet been appointed for the period beginning January 1, 2010, and the determination is made that it would be in the best interests of the State to extend the appointments, and the firms appointed under this RFP agree to extend the appointments.

### **RESPONSIBILITIES OF BOND COUNSEL**

Bond counsel will have the responsibilities, and perform the functions, usually associated with bond counsel in the issuance of lease revenue bonds. These services will likely include, but will not be limited to: development of necessary legal documentation; assistance with the issuance and sale of the bonds; issuance of an opinion as to the legality and validity of the bonds; issuance of an opinion regarding the tax-exempt status of the bonds; assisting, in a limited manner, in the preparation and development of an official statement for the bond issues; and attending to the details of the closings and printing of the bonds, as required. Bond counsel will also be expected to attend all meetings associated with the issuance of bonds.

In addition to performing the functions usually associated with bond counsel, bond counsel will provide State officials with up to twenty-five (25) hours of legal advice on matters related to lease revenue bonds, as explained above under "Nature of the Appointments."

### **REQUIRED CONTENTS OF PROPOSALS TO SERVE AS BOND COUNSEL**

Proposals to serve as bond counsel must address the following criteria, which the Attorney General will use to select bond counsel:

- A. The ability of the firm to complete bonding transactions in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
  - 1. The experience of the firm as bond counsel or disclosure counsel on general obligation bond and revenue bond transactions. (If the firm has recently submitted to us a proposal on another bond or note issue, the firm may refer to and incorporate any parts of that proposal into this proposal, updating information where necessary.)

2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyers' Municipal Marketplace (the "Red Book"). The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as bond counsel, but primary use of local attorneys will be a positive element in evaluating this factor.
  3. The availability of the firm to complete work on the bond issues in a timely and professional manner.
- B. The fee structure and estimated costs for the legal services provided. The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR BOND COUNSEL WILL BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

In preparing its fee proposal, the firm should assume the following:

1. All bonds will be sold via competitive bid.
2. In addition to performing the functions usually associated with bond counsel, bond counsel will provide State officials with up to twenty-five (25) hours of legal advice on matters related to lease revenue bonds, as explained above under "Nature of the Appointments."
3. The 2008 General Session of the Legislature approves the issuance of a certain amount of lease revenue bonds for new projects. The SBOA then determines that during 2008 [, in one bond issue,] it will issue [part of the lease revenue bonds authorized prior to 2008 but not issued, and] part of the bonds authorized by the 2008 Legislature. Bond counsel performs the services customarily performed by bond counsel to enable the SBOA to issue the lease revenue bonds. In providing services as bond counsel for

the issuance of these bonds, bond counsel encounters no unusual circumstances which would justify an adjustment in fees.

Bond counsel is consulted by State officials for a total of twenty-five (25) hours during calendar year 2008, including consultation with persons in the Legislative branch during the 2008 General Session and special sessions of the Legislature, and consultation with State officials between bond issues.

4. The 2009 General Session of the Legislature approves the issuance of a certain amount of lease revenue bonds for new projects. The SBOA then determines that during 2009, in one bond issue, it will issue [part of the bonds authorized prior to 2008 but not issued,] part of the bonds authorized by the 2008 Legislature but not issued, and part of the bonds authorized by the 2009 Legislature. Bond counsel performs the services customarily performed by bond counsel to enable the SBOA to issue the lease revenue bonds. In providing services as bond counsel for the issuance of these bonds, bond counsel encounters no unusual circumstances which would justify an adjustment in fees.

Bond counsel is consulted by State officials for a total of twenty-five (25) hours during calendar 2009, including consultation with persons in the Legislative branch during the 2009 General Session and special sessions of the Legislature, and consultation with State officials between bond issues.

5. For each bond issue, there are no unusual real estate matters or other unusual circumstances which must be considered.

GIVEN THESE ASSUMPTIONS, PLEASE INDICATE WHAT THE FIRM'S FEES AS BOND COUNSEL WOULD BE IN 2008, AND IN 2009 IF THE FIRM'S FEES WOULD DIFFER IN 2009 FROM WHAT THEY WOULD BE IN 2008, FOR BOND ISSUES IN:

- a. \$5 MILLION INCREMENTS FROM \$5 MILLION TO \$50 MILLION;
- b. \$10 MILLION INCREMENTS FROM \$50 MILLION TO \$100 MILLION; AND
- c. \$50 MILLION INCREMENTS FROM \$150 MILLION TO \$500 MILLION.

AS THE FIRM PREPARES ITS PROPOSAL, PLEASE NOTE NO FUNDS ARE AVAILABLE FROM THE STATE, THE ATTORNEY GENERAL'S OFFICE, OR THE SBOA FOR PAYMENT OF FEES OR COSTS IF

BONDS ARE NOT ISSUED, NOR DO ANY OF THESE ENTITIES HAVE FUNDS TO PAY FOR CONSULTATION TIME IF BONDS ARE NOT ISSUED. Therefore, if the firm intends to be compensated for consultation services during the legislative session and between bond issues, the firm's proposal should make provision for compensation for these consultation services within the firm's proposed fee for the issuance of the lease revenue bonds. For example, if the firm would ordinarily propose a fee of \$1 for each \$1000 of bonds issued, and believes it should receive \$300 per hour for consultation services, the firm's proposed fee might be "\$7,500 (the \$300 per hour for twenty-five (25) hours of consultation) plus \$1 per \$1000 of bonds issued". The Attorney General, in consultation with the appropriate State officials, will allow for adjustments in bond counsel fees, if there are other unusual circumstances, and if funds are available from the bond issue(s). If it appears the number of hours of consultation will significantly exceeds twenty-five (25) hours, the Attorney General will negotiate with the firm as to whether the firm should continue to provide these consultation services, and, if so, what the fee arrangements will be.

Please also indicate any other factors that would affect the firm's proposed fees under the circumstances given above, e.g., "If there is a second or third bond issue during a year, our fees would be adjusted as follows: . . .". Do not indicate factors such as, "If the sale is negotiated, rather than competitively bid, our fee will adjust as follows: . . .," or "If we need to provide more than twenty-five (25) hours of consultation in a year, our fee will be . . .". If the sale is a negotiated sale, or more than twenty-five (25) hours of consultation per year are needed, the Attorney General's office will negotiate the fee with bond counsel.

- C. The number of appointments of, and the total fees received by, the firm in the last three (3) years for bonding work (including note projects) on behalf of the State, the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority.

### **RESPONSIBILITIES OF DISCLOSURE COUNSEL**

Disclosure counsel will have all responsibilities, and will provide all services, normally associated with disclosure counsel for lease revenue bond issues. These responsibilities and services will likely include, but will not be limited to: review of documentation developed by bond counsel and the financial advisor, and development of any additional necessary legal documentation; assistance with the issuance and sale of any debt instruments; issuance of a 10b-5 opinion; assisting in the preparation, development, and review of an official statement for any lease revenue bond issue; and performing such other duties as are normally and customarily required of disclosure counsel. Disclosure counsel will also be expected to attend all meetings required of them associated with a bond issue.



In addition to performing the functions usually associated with disclosure counsel, disclosure counsel will provide State officials with up to ten (10) hours of legal advice to assist the State in complying with the State's continuing disclosure undertaking, as explained above under "Nature of the Appointments."

**REQUIRED CONTENTS OF PROPOSALS TO SERVE AS DISCLOSURE COUNSEL**

Proposals must address the following criteria, which the Attorney General will use to select disclosure counsel:

- A. The ability of the firm to complete bonding transactions in a timely, professional manner. In evaluating this factor, the Attorney General will consider each of the following:
  1. The experience of the firm as bond counsel or disclosure counsel on lease revenue bond and revenue bond transactions. (If the firm has recently submitted to us a proposal on another bond or note issue, the firm may refer to and incorporate any parts of that proposal into this proposal, updating information where necessary.)
  2. The professional resources available to assist with bond issues, and the names and qualifications of the principal attorney(s) who would be assigned to work on the bond issue. At least one attorney who will participate must be a member in good standing of the Utah State Bar, and at least one attorney must be listed among the attorneys in the "Municipal Bond Attorney's Section" of The Bond Buyers' Municipal Marketplace (the "Red Book"). The proposal must state which attorney(s) would actually be providing most of the services. The firm may associate with other firms or attorneys to provide services as disclosure counsel, but primary use of local attorneys will be a positive element in evaluating this factor.
  3. The availability of the firm to complete work on the bond issues in a timely and professional manner.
- B. The fee structure and estimated costs for the legal services provided. The proposal must state whether the firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for costs incurred, in the event bonds are not issued. PREFERENCE WILL BE GIVEN FOR PROPOSED FEES BASED UPON A SET FEE, A FEE SCHEDULE BASED UPON THE DOLLAR AMOUNT OF BONDS ISSUED, HOURLY RATES WITH A CEILING, OR SOME OTHER METHOD BY WHICH THE ISSUER WILL BE ABLE TO ASCERTAIN AT THE OUTSET OF A BOND ISSUE WHAT THE LEGAL FEES FOR DISCLOSURE COUNSEL WILL

BE. The proposal must also state whether there would be a charge for future legal services incidental to the issuance of the bonds, and if so, what type of fee would be charged (e.g., hourly, no charge for first X number of hours, etc.).

In preparing its fee proposal, the firm should assume the following:

1. All bonds will be sold via competitive bid.
2. The 2008 General Session of the Legislature approves the issuance of a certain amount of lease revenue bonds for new projects. The SBOA then determines that during 2008 [, in one bond issue,] it will issue [part of the lease revenue bonds authorized prior to 2008 but not issued, and] part of the bonds authorized by the 2008 Legislature. Disclosure counsel performs the services customarily performed by disclosure counsel to enable the SBOA to issue the lease revenue bonds. In providing services as disclosure counsel for the issuance of these bonds, disclosure counsel encounters no unusual circumstances which would justify an adjustment in fees.
3. The 2009 General Session of the Legislature approves the issuance of a certain amount of lease revenue bonds for new projects. The SBOA then determines that during 2009, in one bond issue, it will issue [part of the bonds authorized prior to 2008 but not issued,] part of the bonds authorized by the 2008 Legislature but not issued, and part of the bonds authorized by the 2009 Legislature. Disclosure counsel performs the services customarily performed by disclosure counsel to enable the SBOA to issue the lease revenue bonds. In providing services as disclosure counsel for the issuance of these bonds, disclosure counsel encounters no unusual circumstances which would justify an adjustment in fees.

GIVEN THESE ASSUMPTIONS, PLEASE INDICATE WHAT THE FIRM'S FEES AS DISCLOSURE COUNSEL WOULD BE IN 2008, AND IN 2009 IF THE FIRM'S FEES WOULD DIFFER IN 2009 FROM WHAT THEY WOULD BE IN 2008, FOR BOND ISSUES IN:

- a. \$5 MILLION INCREMENTS FROM \$5 MILLION TO \$50 MILLION;
- b. \$10 MILLION INCREMENTS FROM \$50 MILLION TO \$100 MILLION; AND
- c. \$50 MILLION INCREMENTS FROM \$150 MILLION TO \$500 MILLION.

AS THE FIRM PREPARES ITS PROPOSAL, PLEASE NOTE NO FUNDS ARE AVAILABLE FROM THE STATE, THE ATTORNEY GENERAL'S OFFICE, OR THE SBOA FOR PAYMENT OF FEES OR COSTS IF BONDS ARE NOT ISSUED, NOR DO ANY OF THESE ENTITIES HAVE FUNDS TO PAY FOR LEGAL SERVICES WITH RESPECT TO REVIEWING THE STATE'S CONTINUING DISCLOSURE OBLIGATION IF BONDS ARE NOT ISSUED. Therefore, if the firm intends to be compensated for legal services with respect to reviewing the State's continuing disclosure obligation, the firm's proposal should make provision for compensation for these legal services within the firm's proposed fee for the issuance of the lease revenue bonds. For example, if the firm would ordinarily propose a fee of \$1 for each \$1000 of bonds issued, and believes it should receive \$300 per hour for legal services with respect to reviewing the State's continuing disclosure obligation, the firm's proposed fee might be "\$3,000 (the \$300 per hour for ten (10) hours of consultation) plus \$1 per \$1000 of bonds issued". The Attorney General, in consultation with the appropriate State officials, will allow for adjustments in bond counsel fees, if there are other unusual circumstances, and if funds are available from the bond issue(s). If it appears the number of hours of consultation will significantly exceeds ten (10) hours, the Attorney General will negotiate with the firm as to whether the firm should continue to provide these consultation services, and, if so, what the fee arrangements will be.

Please also indicate any other factors that would affect the firm's proposed fees under the circumstances given above, e.g., "If there is a second or third bond issue during a year, our fees would be adjusted as follows: . . .". Do not indicate factors such as, "If the sale is negotiated, rather than competitively bid, our fee will adjust as follows: . . .," or "If we need to provide more than ten (10) hours of legal services with respect to reviewing the State's continuing disclosure obligation in a year, our fee will be . . .". If the sale is a negotiated sale, or more than ten (10) hours of legal services with respect to reviewing the State's continuing disclosure obligation per year are needed, the Attorney General's office will negotiate the fee with bond counsel.

- C. The number of appointments of, and the total fees received by, the firm in the last three (3) years for bonding work (including note projects) on behalf of the State, the State Board of Regents, any of the State's colleges or universities, or the Utah Higher Education Assistance Authority.

#### **OTHER MATTERS FOR CONSIDERATION**

1. Firms may submit proposals to serve as bond counsel, as disclosure counsel, or both. HOWEVER, THE ATTORNEY GENERAL WILL NOT SELECT THE SAME FIRM TO SERVE AS BOND COUNSEL AND DISCLOSURE COUNSEL FOR THESE

APPOINTMENTS. Therefore, firms should not submit any information for fees or other matters “if our firm is selected as both bond counsel and disclosure counsel,” since that is not an option.

2. For the past several years, the State’s financial advisor has prepared the first draft of the preliminary official statement (“POS”) for all bond issues. However, the State has issued general obligation bonds and lease revenue bonds at least once a year for over twenty years, so the official statement (“OS”) for general obligation bonds and the OS for lease revenue bonds issued by the State are only a year old at most. In the past, while it has obviously been necessary to change the description of the bonds in the prior year’s OS to provide details of the bonds to be issued, and charts have needed to be updated, many areas have required little or no change from the prior year’s OS, such as those parts that describe the structure of State government, the State’s budgeting and appropriations processes, and its revenue sources. Thus it is expected that even if the financial advisor does not prepare the first draft of the POS, disclosure counsel will not need to prepare the POS and OS from scratch.

A copy of the entire OS for the “State of Utah, State Building Ownership Authority \$15,380,000 Lease Revenue and Refunding Bonds (State Facilities Master Lease Program), Series 2007A,” which is the most recent OS for lease revenue bonds issued by the SBOA, may be accessed on the internet at [www.utmuni.com](http://www.utmuni.com).

3. Should a key attorney in a firm leave that firm during the period of the firm’s appointment under this RFP, the Attorney General reserves the right, in his sole discretion, (a) to have the appointment follow the attorney to the attorney’s new firm, (b) to leave the appointment with the firm originally appointed, or (c) to appoint a new firm to fill the appointment for the remainder of the period.

## **DEADLINE FOR SUBMITTING PROPOSALS**

Written proposals must be received by the Utah Attorney General, c/o Bryce H. Pettey, Assistant Attorney General, 160 East 300 South, Fifth Floor, P. O. Box 140874, Salt Lake City, UT 84114-0874, **no later than 12:00 p.m. (Noon) on Friday, January 18, 2008**. The Attorney General reserves the right to accept or reject any or all proposals received after the due date, to accept or reject any or all proposals or any or all parts of a proposal, to waive minor defects or technicalities, and to request new proposals.

## **THE SELECTION PROCESS**

### **In General**

The Attorney General will select bond counsel and disclosure counsel based upon each of the criteria set forth above under the respective headings of “**REQUIRED CONTENTS OF PROPOSALS FOR BOND COUNSEL**” and “**REQUIRED CONTENTS OF PROPOSALS FOR DISCLOSURE COUNSEL**”. All criteria set forth under those headings are important,

but the criteria in paragraph A under each heading will be given the greatest weight. Each of the subparagraphs of each paragraph A will be given equal weight, and the subparagraphs will be evaluated in the order they appear in each paragraph A.

A firm must first be determined to be qualified under paragraph A to perform the services described for bond counsel or disclosure counsel. After passing that threshold, the factors in paragraphs B and C will be considered. The lowest proposed fees will be an important factor in selecting bond counsel and disclosure counsel, but other factors will also be considered, and the firm submitting the lowest proposed fee will not necessarily be the firm that is selected.

The Attorney General may seek input from appropriate State officials and from prior issuers who have had experience with firms submitting proposals. Such input may be considered by the Attorney General in making the selection.

### **Oral Presentations**

After reviewing the written proposals, the Attorney General may select bond counsel, disclosure counsel, or both at that time; however, the Attorney General reserves the option of selecting several of the top applicants for bond counsel and several of the top applicants for disclosure counsel (selected on the basis of the written proposals) to make oral presentations to supplement the information in the written proposals. The Attorney General will decide whether oral presentations are needed or desirable, based upon factors brought to the Attorney General's attention by the Attorney General's staff and other State officials, the amount of time available to hear such presentations, and the Attorney General's own schedule. The Attorney General may choose to have those oral presentations made to a panel of persons of the Attorney General's own choosing; if so, the Attorney General may or may not be a member of that panel. Information in those oral presentations, and any recommendations from a panel or panel members, may be considered by the Attorney General, along with the information in the written proposals, in making the final selection of bond counsel and disclosure counsel.

If the Attorney General decides oral presentations are needed or desirable, the firms selected after initial review of the written proposals will be contacted by the Attorney General's office, and arrangements will be made to have the firms make their oral presentations. After these presentations, the Attorney General will select bond counsel and disclosure counsel.

### **NOTICE OF SELECTION**

After the Attorney General has selected the firms, the selected firms will be notified. If a firm the Attorney General has selected is unable or unwilling to accept the appointment, the Attorney General will select another firm based upon the same criteria used to select the first firm. After firms have been selected that are willing to, and do, accept the appointments under this RFP for bond counsel and disclosure counsel, a general announcement will be made to the public. It is anticipated bond counsel and disclosure counsel will be named no later than Friday,

February 1, 2008. Interested persons can learn the name of the firm appointed by calling 801-366-0375 on Friday, February 8, 2008.

**NON-DISCLOSURE OF REASONS FOR SELECTING FIRM APPOINTED  
AND OF INFORMATION IN PROPOSALS;  
POSSIBLE REQUIREMENT TO DISCLOSE**

Administrative Rule R105-1 provides that the reasons for selecting the firms that are appointed will not be made available to anyone. However, like all other State agencies, the Attorney General's office is subject to the Government Records Access and Management Act ("GRAMA") (Chapter 2, Title 63, Utah Code Ann. (West 2004 & Supp. 2007)). GRAMA makes most documents held by government entities in the state "public records," as defined in GRAMA. It is not yet clear just what effect GRAMA has upon proposals submitted in response to an RFP, such as this one. The Attorney General's office continues to analyze GRAMA for its effect on all written documents received by the Attorney General's office, including proposals received in response to an RFP, but all persons submitting proposals are on notice that the Attorney General may not be able to keep the information in the proposals confidential. **A firm desiring to protect the confidentiality of all or part of the contents of its proposal may wish to consider the applicability of Utah Code Ann. § 63-2-308 (West Supp. 2007).**

**FURTHER INFORMATION**

Questions relating to the business aspects of lease revenue bonds to be issued under this RFP should be referred to Edward T. Alter, State Treasurer (801-538-1042), or to Carl F. Empey, Managing Director, Zions Bank Public Finance (the State's financial advisor) (801-844-7373). Firms should feel free – and indeed are encouraged – to contact Mr. Alter or Mr. Empey directly with any questions they may have regarding the business aspects of the issuance of lease revenue bonds by the SBOA. There is no need for a firm to contact the Attorney General's office first before making inquiry of Mr. Alter or Mr. Empey. Questions relating to this RFP, or relating to the Attorney General's process of selecting bond counsel and disclosure counsel under this RFP, should be referred to Bryce H. Pettey, Assistant Attorney General (telephone (801-366-0375), facsimile (801-366-0378), e-mail (bpettey@utah.gov)).